

**Jason L. Kafoury (OSB #091200)
Mark McDougal (OSB #890869)
Kafoury & McDougal
411 SW Second Avenue, Suite 200
Portland, OR 97204
(503) 224-2647
Fax: (503) 224-2673
jkafoury@kafourymcdougal.com
mcdougal@kafourymcdougal.com
Attorneys for Plaintiff**

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Eugene DIVISION

JAMES M. CLEAVENGER,

Case No. 6:13-cv-01908-DOC

Plaintiff,

vs.

**UNIVERSITY OF OREGON (an Agency and
Instrumentality of the State of Oregon), et al.,**

Defendants.

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTIONS TO
STRIKE AGAINST PLAINTIFF'S
SECOND AMENDED COMPLAINT**

ORAL ARGUMENT REQUESTED

Plaintiff hereby requests oral argument on this matter, and responds to defendants' motions as follows:

Motion (a)(1). Plaintiff has agreed to redraft paragraphs 105 and 161. Plaintiff did not agree to strike the paragraphs as asserted on page 8, bottom paragraph, of defendant's motion (ECF #59).

Motion (a)(2). Plaintiff has dropped Linda King and Randy Wardlow as defendants. Therefore, plaintiff has no objection to striking that they are sued in their official and individual capacities. Plaintiff agrees to remove the word “defendant” in paragraph 13. The reference to the Fourth Amendment in paragraph 148 is a typo. It should read, “First and Fourteenth Amendment.” The reference to Fourth Amendment in paragraph 152 is a typo. It should be a reference to the Fifth Amendment.

Motion (a)(3). In paragraphs 134, 170, 174, and 178, the words “UOPD” and “OUS” can be deleted, as they are not defendants. However, defendant Caufield should be substituted for “OUS” in each paragraph.

Motion (a)(4). Defendants are misreading the allegation. Plaintiff did not allege that he filed the complaint on May 19. Plaintiff alleged that he notified his superiors that he was going to file a complaint to start the grievance process.

Motion (a)(5). Defendants are incorrect. Plaintiff does not allege in paragraph 102 that he contacted Ryan Hagemann via email. Rather, paragraph 102 states that the SEIU contacted Ryan Hagemann.

Motion (a)(6). It is true that plaintiff alleges in paragraph 113 that Caufield issued an adjudication of the letter of reprimand. Caufield did so without a hearing. The entire point of the allegation in paragraph 154 is that Ryan Hagemann held a hearing and no decision was ever made by Ryan Hagemann. If anything, the words “by Ryan Hagemann” should be added after the phrase, “no decision was made,” in the second to last sentence of paragraph 154.

Motion (a)(7). Plaintiff has no objection to dropping the last sentence in paragraph 4. It is hardly improper for plaintiff to allege his qualifications and background when he is alleging he

was wrongfully terminated for pretextual reasons and was otherwise qualified for the job. The same reasoning applies to paragraphs 14, 15, 16, and 17.

Motion (a)(8). The entirety of Motion (a)(8) is also aimed at trying to sanitize plaintiff's allegations regarding events that would give rise to motive, personal animus by supervisors against plaintiff, and plaintiff's exercise of his First Amendment rights with regard to his political beliefs. The allegations also go to intent, bias, and motive for retaliation.

Motion (b). Plaintiff incorporates by reference the response to Motion 5 of defendants' motion to dismiss. Plaintiff further advances that even absent a due process claim, the allegations regarding how his appeals and grievances were handled are also evidence of retaliatory intent and pretext for the real reasons why he was being fired. They are also a form of his punishment for exercising his First Amendment rights. The paragraphs also demonstrate the lengths to which defendants went to try to make sure that plaintiff would not be reinstated. To the extent there is an inadequate foundation of an allegation of denial of due process, plaintiff requests leave to plead consistent with plaintiff's argument in response to Motion 5 of defendants' motion to dismiss.

Motion (c). See response to motion (a)(8), above, incorporated herein by reference, and response to Motion (b), above. Even aside from constitutional issues, the alleged conduct of the defendants demonstrates their animus towards the plaintiff and their intent to retaliate against plaintiff.

Motion (d). Even aside from the relevance of these paragraphs to plaintiff's due process violation, these paragraphs demonstrate the rules that ordinarily would have been followed when an employee's termination was being contested were not followed with regard to plaintiff. These

allegations demonstrate that the reasons for terminating plaintiff were pretextual, defendants were retaliating, and they had animus towards plaintiff.

Within the above response, plaintiff has agreed to make certain changes to the complaint and pointed out typographical errors. Plaintiff requests leave to file an amended complaint in conformance therewith.

DATED April 30, 2015.

/s/ Mark McDougal

Jason L. Kafoury (OSB #091200)
Mark McDougal (OSB #890869)
Kafoury & McDougal
411 SW Second Avenue, Suite 200
Portland, OR 97204
(503) 224-2647
Fax: (503) 224-2673
jkafoury@kafourymcdougal.com
mcdougal@kafourymcdougal.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on April 30, 2015, I served or caused to be served a true and complete copy of the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTIONS TO STRIKE AGAINST PLAINTIFF'S SECOND AMENDED COMPLAINT** on the party or parties listed below as follows:

- Via CM / ECF Filing
- Via First Class Mail, Postage Prepaid
- Via Facsimile
- Via Personal Delivery
- Via Email

Andrea Coit
Andrea.coit@harrang.com
Harrang Long Gary Rudnick P.C.
360 E 10th Ave, Ste 300
Eugene OR 97401-3273

DATED April 30, 2015.

/s/ Mark McDougal

Jason L. Kafoury (OSB #091200)
Mark McDougal (OSB #890869)
Kafoury & McDougal
411 SW Second Avenue, Suite 200
Portland, OR 97204
(503) 224-2647
Fax: (503) 224-2673
jkafoury@kafourymcdougal.com
mcdougal@kafourymcdougal.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE